

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VAN PENA,
Plaintiff,
v.
TIMOTHY MEEKER, et al.
Defendants.

No. C 00-4009 CW
ORDER ON MOTIONS IN
LIMINE

As discussed at the final pre-trial conference, the Court
rules on the parties' motions in limine as follows:

Plaintiff's Motions in Limine

1. Exclude any question regarding or reference to Plaintiff's
employment with and lawsuit against Solano County
GRANTED, except that Defendant may ask questions about
contemporaneous stressors, including that employment.
2. Exclude expert testimony of Ben A. Rich, J.D., Ph.D.
DENIED, but witness may only testify on bioethics, not on
Plaintiff's credibility.
3. Exclude testimony of any witnesses not disclosed pursuant to
Federal Rule of Civil Procedure 26
GRANTED, unless Plaintiff is able to depose them before trial.

Defendant's Motions in Limine

1. Exclude evidence regarding Plaintiff's photographing of patients

DENIED.

2. Exclude evidence of Defendant's acquaintance with the defendants in Plaintiff's prior lawsuit

DENIED.

3. Exclude evidence of facts relating to Elizabeth R., including medical history, capacity to make DNR/CPR decision, and family wishes about DNR/CPR, in absence of foundation that Plaintiff or Defendant knew such facts.

GRANTED.

4. Exclude evidence of any alleged errors in Nancy Irving's investigation report, in the absence of foundation that Defendant knew of such errors

GRANTED.

5. Exclude evidence purporting to assess the wisdom or propriety of a DNR order or CPR for Elizabeth R.

GRANTED, to the extent Defendant stipulates to a preliminary jury instruction in lieu of this evidence.

6. Exclude evidence of reports of Plaintiff's termination to the California Medical Board and/or the National Practitioner Bank

DENIED.

7. Exclude opinions or findings of the Medical Board of California's Reviewer

DENIED.

8. Exclude opinion testimony of Gary Gathman, M.D.

GRANTED, to the extent that Dr. Gathman will not testify on the propriety of administering CPR to a patient who is in the end stages of a terminal illness.

9. Exclude evidence that Dr. Jenkins and Dr. Russell concurred that a DNR Order was appropriate for one George C. and the bioethics committee's response

DENIED, if Plaintiff can show that the circumstances in the George C. case were sufficiently similar to this case and Defendant knew of or was involved in the decision.

10. Exclude evidence of settlement

GRANTED. Jury will be informed that the case was resolved and that the nature of the resolution is not relevant to their decision.

11. Exclude evidence of Plaintiff's alleged protected speech, except that which survived Defendant's second summary judgment motion

GRANTED IN PART AND DENIED IN PART. Evidence on Plaintiff's refusal to rescind his DNR order will be admitted.

12. Plaintiff's counsel vouching for Plaintiff

GRANTED, neither party's counsel may vouch for witnesses.

13. Plaintiff should be barred from presenting evidence in support of any contention that Elizabeth R. did not give "informed consent"

GRANTED.

IT IS SO ORDERED.

Dated: November 13, 2009



CLAUDIA WILKEN
United States District Judge